

PERSEREC

Technical Report 01-2
March 2001

National Defense Authorization Act of 2001 and Department of Defense Security Clearance Decisions

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Released by
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REPORT DOCUMENTATION PAGE			Form Approved OMB No. 0704-0188	
<p>The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.</p>				
1. REPORT DATE (DD-MM-YYYY) March 2001	2. REPORT TYPE Technical	3. DATES COVERED (From - To) November 2000 – December 2000		
4. TITLE AND SUBTITLE National Defense Authorization Act of 2001 and Department of Defense Security Clearance Decisions				
6. AUTHOR(S) Daniel G. Youpa Ralph M. Carney				
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Defense Personnel Security Research Center 99 Pacific Street, Bldg. 455-E Monterey, CA 93940-2497			8. PERFORMING ORGANIZATION REPORT NUMBER PERSEREC-TR-01-2	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) Defense Personnel Security Research Center 99 Pacific Street, Bldg. 455-E Monterey, CA 93940-2497			10. SPONSORING/MONITOR'S ACRONYM(S) 11. SPONSORING/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Unlimited Distribution				
13. SUPPLEMENTARY NOTES				
14. ABSTRACT The Defense Personnel Security Research Center (PERSEREC) conducted a review of Defense Office of Hearings and Appeals (DOHA) industrial security clearance decisions from 1996 to 2000 to identify and describe cases that meet the National Defense Authorization Act of 2001 requirements concerning prison sentences, drug use, mental incompetence, and dishonorable discharge from the armed forces (Section 1071(c)). PERSEREC obtained electronic copies of the clearance decisions from DOHA. A text-based search and retrieval computer program was used to find text strings associated with imprisonment, drugs, mental incompetence, and dishonorable discharge. A review of those decisions resulted in 23 out of 921 cases with a prison sentence in excess of one year; only 3 were granted clearance. There were 148 cases citing drug use within one year of the close of record, and 25 were approved. No cases were approved when drug use occurred within six months of the close of record. There were no instances of mental incompetence or dishonorable discharge in the reviewed decisions. It was concluded that the impact of the National Defense Authorization Act of 2001 on the DoD can only be partially estimated by this study. The impact of the Act on DOHA industrial security clearance decisions may be minimal since very few clearances have been approved for recent cases that meet the provisions of Section 1071(c).				
15. SUBJECT TERMS Defense Office of Hearings and Appeals, security clearance, imprisonment, drugs, mental incompetence, dishonorable discharge, National Defense Authorization Act, adjudication criteria				
16. SECURITY CLASSIFICATION OF: a. REPORT Unclassified		17. LIMITATION OF ABSTRACT b. ABSTRACT Unclassified	18. NUMBER OF PAGES c. THIS PAGE	19a. NAME OF RESPONSIBLE PERSON James A. Riedel, Director 19b. TELEPHONE NUMBER (Include area code) 831-657-3000

Standard Form 298 (Rev. 8/98)
 Prescribed by ANSI td. Z39.18

Preface

This study was conducted by the Defense Personnel Security Research Center (PERSEREC) to assess the potential impact of the recent security clearance limitations amendment to Chapter 49, Title 10 of the United States Code. The Amendment prohibits the granting or renewal of security clearances for persons sentenced to imprisonment for more than one year, unlawful users of controlled substances, persons determined to be mentally incompetent, and persons dishonorably discharged from the Armed Forces. The present report examines industrial security clearance decisions from the Defense Office of Hearings and Appeals (DOHA) to obtain an estimate of the number of recent cases that were approved but that would be denied under the new provisions.

This project began as an informal review of DOHA industrial security clearance decisions to identify recent Hearing Office cases that meet the prison sentence requirements of the Amendment. The results were promising so the project was expanded to include drug use, mental incompetence, and dishonorable discharge. The purview of the study also was extended from DOHA industrial security clearance decisions to uniformed military and Department of Defense (DoD) civilian cases because the data are relevant and the issues are pervasive. This report should assist DoD in preparing guidance for implementing some of the provisions of the Amendment.

James A. Riedel
Director

Executive Summary

Introduction

The recently enacted National Defense Authorization Act of 2001, Section 1071(c) states that persons who (1) have been convicted of a crime and sentenced to imprisonment for more than one year, (2) use or are addicted to controlled substances, (3) are mentally incompetent, or (4) have been dishonorably discharged from the armed forces will be ineligible for a security clearance, with the exception that the Secretaries of Defense and the military departments may authorize waivers in special cases. Since the Act directly addresses adjudicative criteria used in the Department of Defense (DoD) Personnel Security Program, the Defense Personnel Security Research Center (PERSEREC) undertook a study to assess the impact of Section 1071(c) on decisions reached by DoD adjudicators.

PERSEREC reviewed decisions of the Defense Office of Hearings and Appeals (DOHA) to identify recent industrial security clearance cases that would have fallen under the requirements of Section 1071(c), and to assess whether the decisions in identified cases would have been different because of the Act. It was recognized at the outset that the DOHA cases would offer only an approximation of the total number of DoD cases affected by the Act, but because DOHA clearance decisions were readily available from the DOHA public Web site they served as a source for an initial examination of the issue.

Approach

The present review included 1,085 industrial security clearance decisions (921 cases) from the DOHA public Web site for the years 1996 to 2000. PERSEREC downloaded DOHA Hearing Office decisions from the Web site. A text-based search and retrieval computer program was used to find text strings associated with imprisonment, drugs, mental incompetence, and dishonorable discharge from the armed forces. Those decisions were reviewed to identify cases that met the criteria for each of the provisions of Section 1071(c). Decision outcomes (i.e., to grant or deny clearance) were recorded by examining all available hearings for each of the remaining cases, and brief summaries were written for decisions in which a clearance was initially granted by an Administrative Judge, including decisions that were denied on appeal.

Results

The initial keyword search found 257 decisions (249 cases) with derivatives of prison, incarcerate, jail, and penitentiary. A review of those decisions resulted in 23 cases with a prison sentence in excess of one year. Of the 23 cases with periods of imprisonment exceeding one year, a total of 20 (87%) had their clearance denied or revoked. Of these, 3 cases were initially recommended for clearance approval by an Administrative Judge, but were denied following appeal by department counsel. Only 3 cases (13%) were granted clearance.

The initial keyword search found 508 decisions with derivatives of drug or controlled substance, including decisions that did not formally cite Guideline H (Drug

Involvement). A review of those decisions resulted in 356 cases in which drug abuse was an issue. A total of 148 (42%) cases involved recent drug use, where recent drug use or addiction was defined as occurring within approximately one year of the close of record. Of the 148 cases citing recent drug abuse, a total of 123 (83%) had their clearance denied or revoked. Of these, one case was initially recommended for clearance approval by an Administrative Judge, but was denied following appeal by department counsel. A total of 25 (17%) cases involving recent drug use were granted clearance. However, there were no clearance approvals for cases in which drug use occurred within six months of the close of record.

There were no instances of mental incompetence or dishonorable discharge in the reviewed decisions. Since both are very serious consequences of legal proceedings, instances would almost certainly have been cited using those terms, had they been present in the record evidence, and the search terms used for this study would have identified any relevant cases.

Conclusion

The impact of the National Defense Authorization Act of 2001 on the DoD can only be partially estimated by this study. The effect on DOHA industrial security clearance decisions may be minimal, since very few clearances have been approved for recent Hearing Office cases involving prison sentences greater than one year, recent drug use, mental incompetence, or dishonorable discharge from the armed forces. Furthermore, since Section 1071(c) gives waiver authority to the Secretary of Defense and the Secretaries of the military departments for meritorious cases, it is reasonable to expect that some of the cases granted clearance by DOHA would also be granted clearance under the authority of the National Defense Authorization Act.

Notwithstanding these results, the cases reviewed for this study represent only about 2.5 percent of the industrial security clearance cases processed by DOHA during the years 1996 to 2000. It is unclear how many of the cases that did not go to the Hearing Office meet the exclusionary criteria of Section 1071(c), but they are likely to involve cases where the applicant has withdrawn from the administrative authority of DoD.

It also is uncertain how these findings apply to the military departments and DoD agencies. There are known differences between military and industrial populations for the prevalence of cases with criminal and drug issues. In general, military populations have more criminal cases and fewer drug cases than industry. It seems likely there will be some military personnel security cases which will require clearance denials or revocations because of the felony exclusion in Section 1071(c).

This study also points out that the impact of the National Defense Authorization Act of 2001 will depend on how DoD interprets the phrase, "is an unlawful user of, or is addicted to, a controlled substance." If use refers to the most recent six months in a person's background, there should be little impact. However, if use refers to the past year, there could be a number of cases that are automatically denied security clearance under Section 1071(c).

Finally, an important topic that this study did not address is personnel with clearances who will become ineligible under the provisions of the Act during a periodic reinvestigation. It is impossible to estimate how many cases will fall under this scenario, but it is likely these cases will be meritorious because of past performance while holding a clearance. These are the cases that will most likely require the attention of the Secretaries of Defense or the military departments.

Recommendations

- Develop procedures for mitigating meritorious cases excluded by the provisions of Section 1071(c). This will involve instructions for preparing a statement of the reasons for mitigating an excluded case, and developing procedures for review and signature by the respective Secretaries.
- The study also suggests that Command, Control, Communications, and Intelligence (C3I) may have to issue guidance for interpreting the drug use restriction. The current adjudicative guidelines are more general than earlier issuances in terms of recency of use. It may be necessary to define recent drug use more precisely.

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Introduction

Background

The recently enacted National Defense Authorization Act of 2001, Section 1071(c) states that persons who (1) have been convicted of a crime and sentenced to imprisonment for more than one year, (2) use or are addicted to controlled substances, (3) are mentally incompetent, or (4) have been dishonorably discharged from the armed forces will be ineligible for a security clearance, with the exception that the Secretaries of Defense and the military departments may authorize waivers in special cases (see Appendix A). Since the Act directly addresses adjudicative criteria used in the Department of Defense (DoD) Personnel Security Program, the Defense Personnel Security Research Center (PERSEREC) undertook a study to assess the impact of Section 1071(c) on decisions reached by DoD adjudicators.

PERSEREC reviewed decisions of the Defense Office of Hearings and Appeals (DOHA) to identify recent industrial security clearance cases that would have fallen under the requirements of Section 1071(c), and to assess whether the decisions in identified cases would have been different because of the Act. DOHA decisions were selected because they were readily available from the DOHA public Web site.¹ DOHA is the only adjudication facility that publishes their security clearance decisions on a public Web site. It was recognized at the outset that the DOHA cases would offer only an approximation of the total number of DoD cases affected by the Act. Nevertheless, they served as a source for an initial examination of the issue.

Adjudication decisions for uniformed military and civil service security clearances are made by component Central Adjudication Facilities (CAFs) and Personnel Security Appeal Boards (PSABs) affiliated with the military services and DoD agencies. These decisions are not in the same easily retrievable format as the DOHA decisions, and consequently were not considered for this study.

Defense Office of Hearings and Appeals (DOHA)

DOHA adjudicates DoD industrial contractor cases with issues of security concern. DOHA issues a Statement of Reasons (SOR) if the disqualifying factors have lead an adjudicator to make a preliminary decision to deny or revoke eligibility for access to classified information. Individuals who respond to refute, correct, extenuate, mitigate, or update security concerns and adverse information in the statement may request a hearing before an Administrative Judge or request a determination based on the submitted written material. After an Administrative Judge determination, either the applicant or Department Counsel may appeal to the DOHA Appeal Board. The Appeal Board's function is to determine whether or not the Administrative Judge's decision was arbitrary, capricious, or contrary to law. At this level, decisions may be affirmed, reversed, or remanded back to the Administrative Judge. Appeal Board decisions are based solely on the record evidence, and are final.

Written statements for both hearings and appeals are posted on the DOHA Web site. Because of the public dissemination of the decisions, the case material contains no

¹ The URL for the DOHA Web site is <http://www.defenselink.mil/dodgc/doha/>.

personal information, but does provide relevant information about the types and circumstances of issues in the case, and the rationale for the final decision. This information was used to obtain details on cases that could be affected by the National Defense Authorization Act of 2001.

Criminal Conduct, Drug Abuse, Mental Incompetence, and Dishonorable Discharge

The four areas of security concern in the National Defense Authorization Act of 2001, Section 1071(c) are also covered under the existing adjudicative guidelines provided in Enclosure 2 of DoD Directive 5220.6. The guidelines used by DoD adjudicators for security clearance determination provide direction for cases involving criminal conduct, drug abuse, mental incompetence, and dishonorable discharge from the armed forces (see Appendix B for a complete list of the guidelines). Of the 13 adjudicative criteria, two directly address Section 1071(c) sentencing and drug use provisions: Guideline J (Criminal Conduct) and Guideline H (Drug Involvement). Mental incompetence and dishonorable discharge are not explicitly addressed in the guidelines, but these kinds of issues are covered by Guideline I (Emotional, Mental, and Personality Disorders) and Guideline E (Personal Conduct) respectively. Dishonorable discharge cases could conceivably cite other guidelines (e.g., Guideline J, Criminal Conduct) depending on the characteristics of the case.

According to Guideline J (Criminal Conduct), applicants may be denied clearance if there is unmitigated evidence of a single serious crime or multiple lesser offenses, regardless of whether or not they were formally charged.² Serious and lesser offenses can reasonably be presumed to mean felonies and misdemeanors respectively. It also seems reasonable to assume that the sentencing criterion in Section 1071(c) was designed to address felonious conduct, since prison sentences greater than one year are typically associated with felonies. Since the vast majority of cases involving felonious conduct are already being denied clearance by DOHA, it appears that the Section 1071(c) sentencing provision reinforces Guideline J without significantly changing the meaning of the directive, at least within DOHA.

The current version of the Adjudicative Guidelines discourages granting a security clearance to unlawful users or persons addicted to controlled substances. Any unmitigated evidence of drug abuse, dependence, addiction, possession, cultivation, manufacture, purchase, sale, distribution, or failure to successfully complete a drug treatment program may be grounds for disqualification under Guideline H (Drug Involvement). In addition, federal law prohibits the use of illegal drugs by federal employees and mandates a drug free workplace (Executive Order No. 12564, 1986). Therefore, similar to the felony provision for criminal conduct, the drug abuse clause in Section 1071(c) appears to strengthen existing adjudicative standards without requiring significant changes to current security clearance policy (and presumably practice).

There is a question, however, concerning the interpretation of the word "is" as it is used in the drug use clause (i.e., "The person is an unlawful user of, or is addicted to, a controlled substance..."). The word "is" in this context could mean either current or

² It should be noted that an earlier version of DoD Directive 5220.6, Enclosure 2 (January 2, 1992) contained a felony policy. This version of the guidelines stipulated that felonious conduct should result in clearance denial unless there are compelling reasons to grant or continue.

recent. Implementation of the provision will require guidance regarding what constitutes current or recent drug abuse. While this report does not provide recommendations for how to implement the provisions of Section 1071(c), it does attempt to provide an empirical estimate of the potential impact of Section 1071(c) on DOHA industrial security clearance decisions.

Approach

The present review included 1,085 industrial security clearance decisions (921 cases) from the DOHA public Web site for the years 1996 to 2000.³ PERSEREC downloaded DOHA Hearing Office decisions from the Web site. A text-based search and retrieval computer program was used to find text strings associated with imprisonment, drugs, mental incompetence, and dishonorable discharge from the armed forces. For instance, a keyword search was conducted using derivatives of prison, incarcerate, jail, and penitentiary to locate decisions involving imprisonment. Those decisions were then reviewed to identify cases that cited a prison sentence exceeding one year. Decision outcomes (i.e., to grant or deny clearance) were recorded by examining all available hearings for each of the remaining cases, and brief summaries were written for decisions in which a clearance was initially granted by an Administrative Judge, including decisions that were denied on appeal. Similar procedures were used to investigate drug abuse (search terms were drug* and controlled substance*), mental incompetence (search terms were mental* incompeten*), and dishonorable discharge (search terms were dishonorabl* discharge*).

Results

Prison Sentence Exceeding One Year

The initial keyword search found 257 decisions (249 cases) with derivatives of prison, incarcerate, jail, and penitentiary. A review of those decisions resulted in 23 cases with a prison sentence in excess of one year.

Of the 23 cases with periods of imprisonment exceeding one year, a total of 20 (87%) had their clearance denied or revoked. Of these, 3 cases were initially recommended for clearance approval by an Administrative Judge, but were denied following appeal by department counsel. A total of 3 (13%) cases with prison sentences greater than one year were granted clearance. Table 1 shows the number and percentage of cases meeting the prison sentence exclusion criterion that were denied, denied on appeal, and granted clearance. See Appendix C for brief summaries of the 6 cases that were granted clearance, or initially granted clearance and then denied on appeal.

³ Decisions include both Administrative Judge hearings and Appeal Board hearings, so the number of decisions is not equal to the number of cases, or individual applicants. A case may be heard several times before a final decision is reached.

Table 1
DOHA Decisions for Cases Citing Imprisonment in Excess of One Year

<i>Decision Type</i>	<i>Number of Cases</i>	<i>Percent of Cases</i>
Denied	17	74
Denied On Appeal	3	13
Granted	3	13
Total	23	100

Drug Use and Addiction

The initial keyword search found 508 decisions with derivatives of drug or controlled substance, including decisions that did not formally cite Guideline H (Drug Involvement).⁴ A number of the decisions were irrelevant, however, because the keywords were used in some other context. The keyword search had identified some decisions in which drug use or addiction were not a concern. For example, some of the decisions that were retrieved in the initial search included phrases like “alcohol and drug abuse counseling” or “substance abuse program” for cases involving alcohol consumption problems.

A review of those 508 decisions resulted in 356 cases in which drug abuse was an issue. A total of 148 (42%) cases involved recent drug use, defined as drug use occurring within approximately one year of the close of record. Of the 148 cases citing recent drug abuse, a total of 123 (83%) had their clearance denied or revoked. Of these, one case was initially recommended for clearance approval by an Administrative Judge, but was denied following appeal by department counsel. A total of 25 (17%) cases involving recent drug use were granted clearance. Table 2 shows the number and percentage of cases involving recent drug abuse that were denied, denied on appeal, and granted clearance. See Appendix D for brief summaries of the 26 cases involving recent drug abuse that were granted clearance, or initially approved and then denied on appeal.

⁴ There were 340 cases in the database that formally cited Guideline H (Drug Involvement).

Table 2
DOHA Decisions for Cases Involving Recent Drug Abuse

<i>Decision Type</i>	<i>Number of Cases</i>	<i>Percent of Cases</i>
Denied	122	82
Denied On Appeal	1	1
Granted	25	17
Total	148	100

In an effort to assay implementation of the term “is”, a finer-grained analysis was conducted on drug cases to examine the influence of the recency of drug use on DOHA decisions. Table 3 shows the number of cases granted and denied clearance where drug use was within 90, 180, and 365 days of the close of record. As can be seen in Table 3, there were no cases involving drug use within 180 days of the close of record in which a clearance was granted. Conversely, there were 25 clearance denials for cases citing drug use within 180 days of the close of record.

Table 3
Frequency of Cases Granted and Denied Clearance within 90, 180, and 365 Days of the Close of Record

	<i>Granted Clearance</i>	<i>Denied Clearance</i>
≤ 90 Days	0	8
91 - 180 Days	0	17
181 - 365 Days	25	98
Total	25	123

Mental Incompetence and Dishonorable Discharge

There were no instances of mental incompetence or dishonorable discharge in the reviewed decisions. Since both are very serious consequences of legal proceedings, instances would almost certainly have been cited using those terms, had they been present in the record evidence, and the search terms used for this study would have identified any relevant cases.

Conclusion

The impact of the National Defense Authorization Act of 2001 on the DoD can only be partially estimated by this study. The effect on DOHA industrial security clearance decisions may be minimal, since very few clearances have been approved for recent Hearing Office cases involving prison sentences greater than one year, recent drug

use, mental incompetence, or dishonorable discharge from the armed forces. This study identified three cases over the past four years in which the applicant had been sentenced to more than one year in prison and was subsequently granted a security clearance by DOHA. There were 25 cases approved involving drug use within one year of the close of record, but no cases were granted when the drug use was within six months or less. There were no cases of mental incompetence or dishonorable discharge. Since Section 1071(c) gives waiver authority to the Secretary of Defense and the Secretaries of the military departments for meritorious cases that fall under the exclusionary criteria for imprisonment, drug use, mental incompetence, and dishonorable discharge, it is reasonable to expect that some of the cases granted clearance by DOHA would also be granted clearance under the authority of the National Defense Authorization Act.

Notwithstanding these results, the cases reviewed for this study represent only about 2.5 percent of the industrial security clearance cases processed by DOHA during the years 1996 to 2000. All of the reviewed decisions were for cases in which an SOR was issued to the applicant and the applicant requested a hearing. Most of the cases processed by DOHA never include an SOR, and, therefore, never result in a hearing. It is unclear how many of the cases that did not go to the Hearing Office meet the exclusionary criteria of Section 1071(c), but they are likely to involve cases where the applicant has withdrawn from the administrative authority of DoD. Current guidelines require consideration of cases with a single serious crime, any drug abuse that is recent, and mental conditions that may indicate a defect in judgment, reliability, or stability. Cases with these conditions are normally issued SORs. The number of cases with these conditions is unknown, but it is highly unlikely that they were granted clearance for access to classified information without a hearing.

It also is uncertain how these findings apply to the military departments and DoD agencies. There are known differences between military and industrial populations for the prevalence of cases with criminal and drug issues. In general, military populations have more criminal cases and fewer drug cases than industry (Wiskoff and Fitz, 1991). According to the United States General Accounting Office, 710 of the military accessions in 1997 enlisted with moral waivers for felonies (GAO, 1999). It is unknown how many of these personnel were subject to the authority of the Personnel Security Program, but it seems likely there will be some military personnel security cases which will require clearance denials or revocations because of the felony exclusion in Section 1071(c).

This study also points out that the impact of the National Defense Authorization Act of 2001 will depend on how DoD interprets the phrase, "is an unlawful user of, or is addicted to, a controlled substance." If use refers to the most recent six months in a person's background, there should be little impact. However, if use refers to the past year, there could be a number of cases that are automatically denied security clearance under Section 1071(c).

Finally, an important topic that this study did not address is personnel with clearances who will become ineligible under the provisions of the Act during a periodic reinvestigation. It is impossible to estimate how many cases will fall under this scenario, but it is likely these cases will be meritorious because of past performance while holding a clearance. These are the cases that will most likely require the attention of the Secretaries of Defense or the military departments.

Recommendations

Within the constraints of the data, this study suggests that Section 1071(c) of the National Defense Authorization Act of 2001 will minimally impact the number of clearances granted by the DoD Personnel Security Program. Most of the Act's restrictions are already covered in existing guidelines. The major impact will be mitigating meritorious cases falling under the provisions of the Act. While the current mitigating factors probably do not need revision, it will be necessary to develop procedures for mitigating meritorious excluded cases. This will involve instructions for preparing a statement of the reasons for mitigating an excluded case, and developing procedures for review and signature by the respective Secretaries. PERSEREC can assist in this effort.

The study also suggests that Command, Control, Communications, and Intelligence (C3I) may have to issue guidance for interpreting the drug use restriction. The current adjudicative guidelines are more general than earlier issuances in terms of recency of use. It may be necessary to define recent drug use more precisely.

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Appendix A:
National Defense Authorization Act of 2001,
Section 1071, Limitation on Granting of Security Clearances

SEC. 1071. LIMITATION ON GRANTING OF SECURITY CLEARANCES.

(a) In General.--Chapter 49 of title 10, United States Code, is amended by adding at the end the following new section:

``Sec. 986. Security clearances: limitations

``(a) Prohibition.--After the date of the enactment of this section, the Department of Defense may not grant or renew a security clearance for a person to whom this section applies who is described in subsection (c).

``(b) Covered Persons.--This section applies to the following persons:

``(1) An officer or employee of the Department of Defense.

``(2) A member of the Army, Navy, Air Force, or Marine Corps who is on active duty or is in an active status.

``(3) An officer or employee of a contractor of the Department of Defense.

``(c) Persons Disqualified From Being Granted Security Clearances.--A person is described in this subsection if any of the following applies to that person:

``(1) The person has been convicted in any court of the United States of a crime and sentenced to imprisonment for a term exceeding one year.

``(2) The person is an unlawful user of, or is addicted to, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

``(3) The person is mentally incompetent, as determined by a mental health professional approved by the Department of Defense.

``(4) The person has been discharged or dismissed from the Armed Forces under dishonorable conditions.

``(d) Waiver Authority.--In a meritorious case, the Secretary of Defense or the Secretary of the military department concerned may authorize an exception to the prohibition in subsection (a) for a person described in paragraph (1) or (4) of subsection (c). The authority under the preceding sentence may not be delegated.

``(e) Annual Report.--Not later than February 1 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report identifying each waiver issued under subsection (d) during the preceding year with an explanation for each case of the disqualifying factor in subsection (c) that applied, and the reason for the waiver of the disqualification.".

(b) Clerical Amendment.--The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

``986. Security clearances: limitations.".

SEC. 1072. PROCESS FOR PRIORITIZING BACKGROUND INVESTIGATIONS FOR

SECURITY CLEARANCES FOR DEPARTMENT OF DEFENSE PERSONNEL AND DEFENSE CONTRACTOR PERSONNEL.

(a) Establishment of Process.--Chapter 80 of title 10, United States Code, is amended by adding after section 1563, as added by section 542(a), the following new section:

``Sec. 1564. Security clearance investigations

``(a) Expedited Process.--The Secretary of Defense shall prescribe a process for expediting the completion of the background investigations necessary for granting security clearances for Department of Defense personnel and Department of Defense contractor personnel who are engaged in sensitive duties that are critical to the national security.

``(b) Required Features.--The process developed under subsection (a) shall provide for the following:

``(1) Quantification of the requirements for background investigations necessary for grants of security clearances for Department of Defense personnel and Department of Defense contractor personnel.

``(2) Categorization of personnel on the basis of the degree of sensitivity of their duties and the extent to which those duties are critical to the national security.

``(3) Prioritization of the processing of background investigations on the basis of the categories of personnel determined under paragraph (2).

``(c) Annual Review.--The Secretary shall conduct an annual review of the process prescribed under subsection (a) and shall revise that process as determined necessary in relation to ongoing Department of Defense missions.

``(d) Consultation Requirement.--The Secretary shall consult with the Secretaries of the military departments and the heads of Defense Agencies in carrying out this section.

``(e) Sensitive Duties.--For the purposes of this section, it is not necessary for the performance of duties to involve classified activities or classified matters in order for the duties to be considered sensitive and critical to the national security.".

(b) Clerical Amendment.--The table of sections at the beginning of such chapter is amended by adding after the item relating to section 1563, as added by section 542(b), the following new item:

``1564. Security clearance investigations.".

(c) Deadline for Prescribing Process for Prioritizing Background Investigations for Security Clearances.--The process required by

section 1564(a) of title 10, United States Code, as added by subsection (a), for expediting the completion of the background investigations necessary for granting security clearances for certain persons shall be prescribed not later than January 1, 2001.

Appendix B:

**Adjudicative Guidelines for Determining Eligibility for Access to
Classified Information from Department of Defense Directive 5220.6,
Enclosure 2 (January 2, 1992)**

1. Introduction. The following adjudicative guidelines are established for all US government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees, and other individuals who require access to classified information. They apply to persons being considered for initial or continued eligibility for access to classified information, to include sensitive compartmented information and special access programs, and are to be used by government departments and agencies in all final clearance determinations

2. The Adjudicative Process. (a) The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudication process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the voluntariness of participation;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

(b) Each case must be judged on its own merits, and final determination remains the responsibility of the specific department or agency. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.

(c) The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense determination based upon careful consideration of the following,

each of which is to be evaluated in the context of the whole person, as explained further below:

- (1) GUIDELINE A: Allegiance to the United States;
- (2) GUIDELINE B: Foreign Influence;
- (3) GUIDELINE C: Foreign Preference;
- (4) GUIDELINE D: Sexual Behavior;
- (5) GUIDELINE E: Personal Conduct;
- (6) GUIDELINE F: Financial Considerations;
- (7) GUIDELINE G: Alcohol Consumption;
- (8) GUIDELINE H: Drug Involvement;
- (9) GUIDELINE I: Emotional, Mental, and Personality Disorders;
- (10) GUIDELINE J: Criminal Conduct;
- (11) GUIDELINE K: Security Violations;
- (12) GUIDELINE L: Outside Activities;
- (13) GUIDELINE M: Misuse of Information Technology Systems

(d) Although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. Notwithstanding the whole-person concept, pursuit of further investigation may be terminated by an appropriate adjudicative agency in the face of reliable, significant, disqualifying, adverse information.

(e) When information of security concern becomes known about an individual who is currently eligible for access to classified information, the adjudicator should consider whether the person:

- (1) Voluntarily reported the information;
- (2) was truthful and complete in responding to questions;
- (3) sought assistance and followed professional guidance, where appropriate;
- (4) resolved or appears likely to favorably resolve the security concern;
- (5) has demonstrated positive changes in behavior and employment;

(6) should have his or her access temporarily suspended pending final adjudication of the information.

(f) If after evaluating information of security concern, the adjudicator decides that the information is not serious enough to warrant a recommendation of disapproval or revocation of the security clearance, it may be appropriate to recommend approval with a warning that future incidents of a similar nature may result in revocation of access.

GUIDELINE A: ALLEGIANCE TO THE UNITED STATES

3. *The Concern.* An individual must be of unquestioned allegiance to the United States. The willingness to safeguard classified information is in doubt if there is any reason to suspect an individual's allegiance to the United States.

4. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Involvement in any act of sabotage, espionage, treason, terrorism, sedition, or other act whose aim is to overthrow the Government of the United States or alter the form of government by unconstitutional means;

(b) association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts;

(c) association or sympathy with persons or organizations that advocate the overthrow of the United States Government, or any state or subdivision, by force or violence or by other unconstitutional means;

(d) involvement in activities which unlawfully advocate or practice the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

5. *Conditions that could mitigate security concerns include:*

(a) The individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of these;

(b) the individual's involvement was only with the lawful or humanitarian aspects of such an organization;

(c) involvement in the above activities occurred for only a short period of time and was attributable to curiosity or academic interest;

(d) the person has had no recent involvement or association with such activities.

GUIDELINE B: FOREIGN INFLUENCE

6. The Concern. A security risk may exist when an individual's immediate family, including cohabitants and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

7. Conditions that could raise a security concern and may be disqualifying include:

- (a) An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
- (b) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;
- (c) relatives, cohabitants, or associates who are connected with any foreign government;
- (d) failing to report, where required, associations with foreign nationals;
- (e) unauthorized association with a suspected or known collaborator or employee of a foreign intelligence service;
- (f) conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government;
- (g) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, coercion or pressure;
- (h) a substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

8. Conditions that could mitigate security concerns include:

- (a) A determination that the immediate family member(s) (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;
- (b) contacts with foreign citizens are the result of official US Government business;
- (c) contact and correspondence with foreign citizens are casual and infrequent;

(d) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons or organizations from a foreign country;

(e) foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

GUIDELINE C: FOREIGN PREFERENCE

9. *The Concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

10. *Conditions that could raise a security concern and may be disqualifying include:*

(a) The exercise of dual citizenship;

(b) possession and/or use of a foreign passport;

(c) military service or a willingness to bear arms for a foreign country;

(d) accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country;

(e) residence in a foreign country to meet citizenship requirements;

(f) using foreign citizenship to protect financial or business interests in another country;

(g) seeking or holding political office in the foreign country;

(h) voting in foreign elections; and

(i) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States

11. *Conditions that could mitigate security concerns include:*

(a) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;

(c) activity is sanctioned by the United States;

(d) individual has expressed a willingness to renounce dual citizenship.

GUIDELINE D: SEXUAL BEHAVIOR

12. *The Concern.* Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, may subject the individual to undue influence or coercion, exploitation, or duress, or reflects lack of judgment or discretion.¹ Sexual orientation or preference may not be used as a basis for or a disqualifying factor in determining a person's eligibility for a security clearance.

¹The adjudicator should also consider guidelines pertaining to criminal conduct (Guideline J) and emotional, mental, and personality disorders (Guideline I) in determining how to resolve the security concerns raised by sexual behavior.

13. *Conditions that could raise a security concern and may be disqualifying include:*

- (a) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) compulsive or addictive sexual behavior when the person is unable to stop a pattern of self-destructive or high-risk behavior or that which is symptomatic of a personality disorder;
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;
- (d) sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

14. *Conditions that could mitigate security concerns include:*

- (a) The behavior occurred during or prior to adolescence and there is no evidence of subsequent conduct of a similar nature;
- (b) the behavior was not recent and there is no evidence of subsequent conduct of a similar nature;
- (c) there is no other evidence of questionable judgment, irresponsibility, or emotional instability;
- (d) the behavior no longer serves as a basis for coercion, exploitation, or duress.

GUIDELINE E: PERSONAL CONDUCT

15. *The Concern.* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following

will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

- (a) Refusal to undergo or cooperate with required security processing, including medical and psychological testing; or
- (b) refusal to complete required security forms, releases, or provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

16. Conditions that could raise a security concern and may be disqualifying also include:

- (a) Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;
- (b) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
- (c) deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;
- (d) personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail;
- (e) a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;
- (f) association with persons involved in criminal activity.

Conditions that could mitigate security concerns include:

- (a) The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
- (b) the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
- (c) the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

- (d) omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;
- (e) the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;
- (f) a refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information;
- (g) association with persons involved in criminal activities has ceased.

GUIDELINE F: FINANCIAL CONSIDERATIONS

- 18. *The Concern.* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.
- 19. *Conditions that could raise a security concern and may be disqualifying include:*
 - (a) A history of not meeting financial obligations;
 - (b) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
 - (c) inability or unwillingness to satisfy debts;
 - (d) unexplained affluence;
 - (e) financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.
- 20. *Conditions that could mitigate security concerns include:*
 - (a) The behavior was not recent;
 - (b) it was an isolated incident;
 - (c) the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

- (d) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;
- (e) the affluence resulted from a legal source; and
- (f) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

GUIDELINE G: ALCOHOL CONSUMPTION

21. *The Concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

22. *Conditions that could raise a security concern and may be disqualifying include:*

- (a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;
- (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;
- (c) diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
- (d) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;
- (e) habitual or binge consumption of alcohol to the point of impaired judgment;
- (f) consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program

23. *Conditions that could mitigate security concerns include:*

- (a) The alcohol related incidents do not indicate a pattern;
- (b) the problem occurred a number of years ago and there is no indication of a recent problem;
- (c) positive changes in behavior supportive of sobriety;
- (d) following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participated frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received

a favorable prognosis by a credentialed medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

GUIDELINE H: DRUG INVOLVEMENT

24. The Concern.

- (a) Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.
- (b) Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances.
- (c) Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

25. Conditions that could raise a security concern and may be disqualifying include:

- (a) Any drug abuse (see above definition);
- (b) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;
- (c) diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (d) evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;
- (e) failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination.

26. Conditions that could mitigate security concerns include:

- (a) The drug involvement was not recent;
- (b) the drug involvement was an isolated or infrequent event;
- (c) a demonstrated intent not to abuse any drugs in the future;

(d) satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional.

GUIDELINE I: EMOTIONAL, MENTAL, AND PERSONALITY DISORDERS

27. *The Concern.* Emotional, mental, and personality disorders can cause a significant deficit in an individual's psychological, social and occupational functioning. These disorders are of security concern because they may indicate a defect in judgment, reliability or stability. A credentialed mental health professional (e.g., clinical psychologist or psychiatrist), employed by, acceptable to or approved by the government, should be utilized in evaluating potentially disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider.

28. *Conditions that could raise a security concern and may be disqualifying include:*

- (a) An opinion by a credentialed mental health professional that the individual has a condition or treatment that may indicate a defect in judgment, reliability, or stability;
- (b) information that suggests that an individual has failed to follow appropriate medical advice relating to treatment of a condition, e.g. failure to take prescribed medication;
- (c) a pattern of high-risk, irresponsible, aggressive, anti-social or emotionally unstable behavior;
- (d) information that suggests that the individual's current behavior indicates a defect in his or her judgment or reliability.

29. *Conditions that could mitigate security concerns include:*

- (a) There is no indication of a current problem;
- (b) recent diagnosis by a credentialed mental health professional that an individual's previous emotional, mental, or personality disorder is cured, under control or in remission and has a low probability of recurrence or exacerbation;
- (c) the past emotional instability was a temporary condition (e.g., one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual is no longer emotionally unstable.

GUIDELINE J: CRIMINAL CONDUCT

30. *The Concern.* A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

31. Conditions that could raise a security concern and may be disqualifying include:

- (a) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
- (b) a single serious crime or multiple lesser offenses.

32. Conditions that could mitigate security concerns include:

- (a) The criminal behavior was not recent;
- (b) the crime was an isolated incident;
- (c) the person was pressured or coerced into committing the act and those pressures are no longer present in that person's life;
- (d) the person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur;
- (e) acquittal;
- (f) there is clear evidence of successful rehabilitation.

GUIDELINE K: SECURITY VIOLATIONS

33. The Concern. Noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.

34. Conditions that could raise a security concern and may be disqualifying include:

- (a) Unauthorized disclosure of classified information;
- (b) violations that are deliberate or multiple or due to negligence.

35. Conditions that could mitigate security concerns include actions that:

- (a) Were inadvertent;
- (b) were isolated or infrequent;
- (c) were due to improper or inadequate training;
- (d) demonstrate a positive attitude towards the discharge of security responsibilities.

GUIDELINE L: OUTSIDE ACTIVITIES

36. *The Concern.* Involvement in certain types of outside employment or activities is of security concern if it poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

37. *Conditions that could raise a security concern and may be disqualifying include:* Any service, whether compensated, volunteer, or employment with:

(a) A foreign country;

(b) any foreign national;

(c) a representative of any foreign interest;

(d) any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology.

38. *Conditions that could mitigate security concerns include:*

(a) Evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities;

(b) the individual terminates the employment or discontinues the activity upon being notified that it is in conflict with his or her security responsibilities.

GUIDELINE M: MISUSE OF INFORMATION TECHNOLOGY SYSTEMS

39. *The Concern.* Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's trustworthiness, willingness, and ability to properly protect classified systems, networks, and information. Information Technology Systems include all related equipment used for the communication, transmission, processing, manipulation, and storage of classified or sensitive information.

40. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Illegal or unauthorized entry into any information technology system;

(b) illegal or unauthorized modification, destruction, manipulation or denial of access to information residing on an information technology system;

(c) removal (or use) of hardware, software, or media from any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations;

(d) introduction of hardware, software, or media into any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations.

41. *Conditions that could mitigate security concerns include:*

(a) The misuse was not recent or significant;

(b) the conduct was unintentional or inadvertent;

(c) the introduction or removal of media was authorized;

(d) the misuse was an isolated event;

(e) the misuse was followed by a prompt, good-faith effort to correct the situation.

Appendix C:
Brief Summaries of Approved Cases with Prison Sentences Exceeding
One Year

Summary of Cases in Which Clearance was Granted

ISCR Case No. 96-0362. Criminal Conduct (Guideline J) was cited in this case.

Applicant had arrests and convictions involving attempted burglary, burglary, conspire to rob, arson, assault & battery, kidnapping, and murder after he confessed to his involvement in a 1978 robbery and kidnapping and confessed that he had witnessed the eventual murder of the victim without taking any steps to stop it. The applicant was sentenced in 1979 to 30 years in prison and will be on parole until 2006. Applicant's last major conviction was in 1979 and Applicant has had no adverse contact with the law since then, other than a DUI in 1992, and has been gainfully employed since his release from prison. The Administrative Judge found that the crimes were not recent and that there was clear evidence of rehabilitation, that the Applicant had taken positive steps over the years to make himself a productive member of society, and that the Applicant's evidence of rehabilitation reinforced the ultimate conclusion that Applicant's criminal past, which ended almost 19 years earlier, would not recur in the future.

ISCR Case No. 96-0710. Criminal Conduct (Guideline J) was cited in this case.

Applicant's criminal conduct ended in 1991. Applicant was charged with falsifying bank loan applications. Applicant pleaded guilty and was sentenced in Federal District Court to 18 months in prison, ordered to pay restitution to the banks, and placed on probation for three years after his release from prison. Applicant's restitution was later reduced. Applicant's prison term was also reduced to ten months to reflect his assistance to the U.S. Attorney's Office. This case was twice appealed by Department Counsel, once obtaining a remand, with the second decision finding rehabilitation ultimately affirmed by the Appeal Board. The Administrative Judge found in mitigation that because applicant cooperated with criminal investigators and had exhibited signs of rehabilitation (e.g., responsibility, restitution, employment), clearance should be granted.

ISCR Case No. 98-0280. Drug Involvement (Guideline H) was cited in this case.

Applicant was convicted in 1982 of conspiracy to distribute cocaine and carrying a concealed weapon. Applicant was sentenced to five to ten years in federal prison. Applicant also was a drug user for many years, with the most recent use occurring two years prior to the hearing. The Administrative Judge found in mitigation that the applicant's misconduct was not recent and was unlikely to recur. The Administrative Judge also found that the applicant had shown signs of maturity, insight, and acceptance of responsibility.

Summary of Cases Denied on Appeal

ISCR Case No. 95-0622. Criminal Conduct (Guideline H) and Poor Judgment (Guideline I) were cited in this case. Applicant was convicted in 1991 of conspiracy to commit fraud, bribery, and conversion as well as bribery of a government official. Applicant was sentenced to 33 months in federal prison on each of four criminal counts. The Administrative Judge found that the misconduct was mitigated due to Applicant's cooperation with criminal investigators, positive character evidence, and successful rehabilitation. The Appeal Board subsequently denied the clearance holding that, "Administrative Judge cannot deviate from plain language of Adjudication Policy without an adequate explanation. Concept of nexus justifies adverse decision that advances some legitimate government interest."

ISCR Case No. 95-0904. Criminal Conduct (Guideline H), Poor Judgment (Guideline I), and Falsification (Guideline O) were cited in this case. This case was decided under different (prior) Guidelines than those in present use. Review was limited to the Appeal Board hearing because hearings prior to 1996 were not available on the DOHA Web site. The Appeal Board decision in this case does not provide length of sentence information. However, it seems likely that applicant was sentenced to more than one year given the nature of the crimes. Applicant apparently had committed some drug offenses which resulted in two felony convictions under the UCMJ and in 1994 was charged with theft of firearms with intent to sell. The Appeal Board held that the, "Administrative Judge failed to apply the Felony Policy properly. The Judge's analysis of Applicant's history of criminal conduct under Section F.3. was not sustainable. Judge's finding of no falsification was clearly erroneous. Judge's heavy reliance on character references was not reasonable." There is no current analog to the "Felony Policy" discussed in this case under the Guidelines in present use.

ISCR Case No. 97-0727. Criminal Conduct (Guideline J) was cited in this case. Applicant was convicted in 1990 of conspiracy to make false statements and aiding abetting and illegal campaign contributions to a political committee, conspiracy to defraud the United States, as well as making and subscribing false corporate income tax returns. Applicant was sentenced to prison for eighteen months. The Administrative Judge found in mitigation that the misconduct was not recent, was unlikely to recur, and that the applicant had demonstrated successful rehabilitation. The Appeal Board held that, "Credibility determination is not a substitute for record evidence. Seriousness of Applicant's criminal conduct not reduced or lessened by fact he served his sentence. Totality of record evidence did not support several key findings made by Administrative Judge. The clearly consistent with national interest standard and nexus concept must be construed and applied in manner that includes consideration of need to protect integrity of industrial security program and maintain public confidence in it. Clear weight of evidence does not support Judge's finding of reform and rehabilitation sufficient to warrant favorable clearance decision."

Appendix D:
Brief Summaries of Approved Cases with Recent Drug Use and/or
Addiction

Summary of Cases in Which Clearance was Granted

Note: These summaries were obtained from the DOHA Web site. Additional material added by the authors is enclosed in brackets [].

ISCR Case No. 96-0443. "Applicant's use of marijuana was very infrequent and he testified credibly that he will never use marijuana again. [Applicant no longer associates with marijuana users, and he is subject to random drug testing.] The weight of the evidence is that his marijuana usage is a thing of the past and not likely to be resumed. Clearance is granted."

ISCR Case No. 96-0475. "Applicant's past marijuana use and security clearance falsification were mitigated by sufficient evidence of reform and Applicant's good faith effort to correct the falsification before being confronted with the facts. [Applicant has made a strong personal commitment to remain drug-free, and has sought professional counseling.] Clearance is granted."

ISCR Case No. 96-0845. "Applicant's regular marijuana abuse while in college ended with his graduation in May 1995; Applicant used marijuana twice more in 1995 and once in July 1996--after obtaining full time employment with a government contractor. However Applicant does not intend to use drugs in the future and recognizes the potential consequences for his clearance if he returns to drug abuse. Clearance granted."

ISCR Case No. 96-0896. "Applicant's illegal drug involvement from 1983 until August 1996 has been mitigated by sufficient evidence of rehabilitation [including lifestyle changes and a strong personal commitment to remain drug-free]. Clearance is granted."

ISCR Case No. 97-0092. "Applicant used marijuana on an infrequent basis from 1977 until 1995/96. No future use. [Applicant does not intend to use marijuana in the future, and his last use was not recent.] Failed to file 1994 tax return in a timely fashion. Return now been filed. Sufficient mitigation is shown. Clearance is granted."

ISCR Case No. 97-0093. "Alcohol marijuana and cocaine dependence diagnosed during a voluntary 21-day rehabilitation program followed by a brief relapse was mitigated by 6+ months of sobriety continued attendance at both NA and AA meetings five or six times a week very positive behavioral changes and a supportive family structure; deviation from a mitigating standard was warranted. Clearance is granted."

ISCR Case No. 97-0228. "Applicant's illegal drug involvement which last occurred in December 1996 is mitigated by sufficient evidence of reform and rehabilitation. Clearance is granted."

ISCR Case No. 97-0442. [Applicant used marijuana once or twice per month for approximately 7 years while holding a security clearance. She stopped using marijuana about a year ago, and does not intend to use it in the future. She has had access to classified information for 18 years without apparent incident. Clearance granted.]

ISCR Case No. 97-0765. "Marijuana use three times 15 years ago and its use over a two-day weekend over eight months ago in reaction to the break-up of an engagement to be married by the Applicant's fiancé was mitigated by the passage of time and

extenuated by the circumstances surrounding such personal crisis. Falsification allegations were refuted by a failure of the Government's proof. Clearance is granted."

ISCR Case No. 97-0782. "Purchase and use of marijuana in a period 3-6 years ago and a one-time slip 11 months ago while holding a clearance at the Applicant's bachelor party were extenuated and mitigated by his demonstrated intent to never use illegal drugs again and his initiative in seeking drug educational guidance. Clearance is granted."

ISCR Case No. 97-0786. "Given Applicant's stated intention to forego drug use in the future which is supported by documentation of negative drugs results over the past year Applicant has successfully demonstrated he is eligible for a security clearance. Clearance is granted."

ISCR Case No. 97-0803. "A user of cannabis (primarily marijuana) since 1973 Applicant continued to use marijuana even after he was granted a secret clearance in May 1989. His use of marijuana declined significantly in the 1990s to where he used it only once in 1997 over the Memorial Day weekend. He no longer intends to use any illegal drug in the future. Clearance is granted."

ISCR Case No. 98-0056. "Applicant has made a persuasive case in demonstrating she will not resume drug use in the future. first she is active in educating the church youth group in about the negatives of drug use. She is pursuing a college degree while accomplishing an excellent job performance for the four month rating period ending in December 1997. Clearance is granted."

ISCR Case No. 98-0098. "As a college student Applicant abused marijuana regularly from April 1993 to May 1995 and infrequently thereafter until his last use in October 1997. He also experimented with X-MDA LSD cocaine and PCP prior to May 1995. He has abstained from all drug use since and intends no future involvement. Clearance is granted."

ISCR Case No. 98-0112. "Applicant's past use of marijuana has been mitigated by sufficient evidence of reform and rehabilitation. [The applicant was young and immature at the time of his marijuana use, and he has now made a strong personal commitment to abstain.] Clearance is granted."

ISCR Case No. 98-0364. "Applicant's drug abuse was mitigated where most of the drug use stopped in 1990 and where Applicant's abuse of marijuana--although more recent--was infrequent. Applicant has stated a credible intent to refrain from drug use in the future. Clearance granted Applicant's drug abuse was mitigated where most of the drug use stopped in 1990 and where Applicant's abuse of marijuana--although more recent--was infrequent. Applicant has stated a credible intent to refrain from drug use in the future. Clearance is granted."

ISCR Case No. 98-0579. "Applicant's illegal drug use from 1967 to 1969 and one time in 1997 and one time in 1998 has been mitigated by sufficient evidence of reform and rehabilitation. [Applicant's recent drug use was infrequent, she is remorseful, and has stated an intention to remain drug-free.] Clearance is granted."

ISCR Case No. 98-0611. "While the Government established its case with regard to its security concerns over Applicant's drug involvement (Applicant has a history of

intermittent marijuana use from 1987 to February 1998 with one time use of LSD in 1989) Applicant has validated his case in mitigation as his drug involvement was intermittent and not recent. He has now demonstrated his intent not to abuse any drugs in the future and understands the security importance of abstaining from any illegal drug use. Clearance is granted."

ISCR Case No. 98-0657. "Thirty-seven-year old Applicant tested positive in urinalysis administered incident to his employment with DoD contractor. Although he had used marijuana regularly for three months prior to being hired he did not have a history of drug use. He had never used marijuana during six years of military service or during 13 years of employment with another DoD contractor. He used marijuana during a time in his life when he was thinking of changing careers. At the time of his hearing he had not used marijuana for ten months and stated he did not intend to use in the future. Clearance is granted."

ISCR Case No. 98-0659. "Even though Appellant used marijuana intermittently for fifteen years (and also used cocaine in the 1980's and used mushrooms once) he has now matured stopped all drug use in March 1998 and has very favorable character references; thus his drug use and occasional purchase of drugs for his own use is mitigated by almost a year of abstinence his demonstrated intent not to use illegal drugs in the future and positive changes in his environment. Clearance is granted."

ISCR Case No. 98-0771. "Applicant's abuse of marijuana--while recent and not isolated--was confined to her college years and declined dramatically during her last two years of college. Drug abuse was mitigated where Applicant demonstrated a clear intent to refrain from drug use in the future. Clearance granted."

ISCR Case No. 98-0813. "After almost twenty years drug-free Applicant abused marijuana from late April 1998 to July 9 1998 on a daily basis from about mid May 1998 as he sought to cope with depression and anxiety caused by the breakup of his marriage and terminal illness of his father. He has refrained from marijuana abuse since testing positive for the drug in a random urinalysis at work continues to receive treatment from a psychologist and has made significant lifestyle changes. Clearance is granted."

ISCR Case No. 99-0108. "Applicant used marijuana three times during the past 5 years. His most recent use was 7 months before the hearing. Applicant's usage was infrequent [and he has stated an intent to remain drug-free]. Clearance is granted."

ISCR Case No. 99-0116. "Applicant naively took a friend of his brother's to a crack house and was arrested in March 1998 for possession of cocaine as he was stopped by police who found cocaine in his car. Although he protested his innocence he made a pragmatic decision to plead guilty in June 1998 and was placed on 5 years probation and given deferred adjudication. He expects his probation to be ended early. He persuasively denies any drug use except for limited and dated marijuana use in the early 1970's while he was in military service. The unique circumstances of this case and his overall credibility lead to mitigating circumstances. Clearance is granted."

ISCR Case No. 99-0376. "Applicant tested positive for marijuana in employer-administered random urinalysis nine months before the SOR was issued. In his signed sworn statement to the DIS he admitted using marijuana prior to the positive urinalysis

but stated he had used it on only one other occasion in the previous seven years and that he did not intend to use marijuana or other illegal substances in the future. Clearance is granted."

Summary of Cases Denied on Appeal

ISCR Case No. 99-0019. Administrative Judge Decision: "Occasional use of marijuana in social situations when it was given to the Applicant was mitigated by his intent never to abuse drugs again, demonstrated by his abstinence during several years in the 1980's when he held a security clearance, and during the past year or so. Clearance is granted." Appeal Board Decision: "Board must consider whether there is record evidence that fairly detracts from Administrative Judge's factual findings, and whether the inferences and conclusions drawn by the Judge are arbitrary, capricious, or contrary to law. Totality of record evidence does not support Judge's finding that Applicant demonstrated an intent to refrain from marijuana use in future. Judge's application of Federal Rule of Evidence 403 not warranted in this case. Judge erred by deciding not to consider Applicant's statements about his views on marijuana, which were relevant and material evidence in light of his history of marijuana use. Favorable decision reversed."